In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 8346 of 2005

Date of Decision: 29.01.2007

Nirmal Singh

…Petitioner

Versus

State of Punjab and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Sunil Nehra, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

This petition, filed under Article 226 of the Constitution, prays for quashing advertisement dated 29.1.2005 (P-8). It has further been prayed that a direction be issued to the respondents to consider the case of the petitioner for promotion to the post of Chief Electrical Inspector in terms of the Punjab Electrical Inspectorate (Class-I) Service Rules, 1992 (for brevity, 'the 1992 Rules') along

with consequential benefits. The primary grievance of the petitioner is that he had been working on the post of Executive Engineer, is senior-most in the cadre and fulfilled all the conditions for promotion as Chief Electrical Inspector, yet, he was ignored for promotion by following the method of direct recruitment without first considering his claim for promotion blatantly infringing the 1992 Rules.

Brief facts may first be noticed. The petitioner was appointed as Assistant Electrical Inspector in the Department of Power (Energy Branch) on 23.12.1979. He was promoted as Executive Engineer on 23.8.1991. It is appropriate to mention that his promotion was made under the then prevailing Rules known as the Punjab Service of Engineers (Electricity Branch) Recruitment Rules, 1939 (for brevity, 'the 1939 Rules'). The 1939 Rules did not postulate any requirement of possessing degree qualification for promotion as Executive Engineer. However, the 1939 Rules were repealed and replaced by the 1992 Rules. According to Rule 8 read with Appendix 'B' of the 1992 Rules, it has been provided that an Assistant Electrical Inspector must possess degree qualification in Electrical Engineering for promotion to the post of Executive Engineer. For further promotion to the post of Chief Electrical Inspector, Rule 8 read with Appendix 'B' provides that an Executive Engineer who has an experience of working as such for a minimum period of 10 years is eligible to be considered for promotion to that post. The mode of promotion to the post of Chief Electrical Inspector is 100 per cent by promotion. It is only in the event of non-

availability of a suitable candidate that appointment could be made by direct recruitment.

The petitioner, who had been working on the post of Executive Engineer since 1991, was not being considered for promotion. The respondent department resorted to the mode of appointment by bringing another person on deputation in preference to the petitioner. The petitioner approached this Court by filing Civil Writ Petition No. 14320 of 2003, seeking the relief that the respondent department could not resort to the mode of deputation for filling up the post of Chief Electrical Inspector in preference to the petitioner who was fully eligible. On 9.3.2004, a Division Bench of this Court disposed of the writ petition along with another petition by passing the following order:-

> " In the result, the writ petitions are allowed. Order Annexure P2 is declared illegal. However, in large public interest, we do not consider it proper to quash that order, more so because in reply to the Court's query, Ms. Kusumjit Sidhu stated that fresh exercise for making recruitment in accordance with the 1992 Rules will be initiated at the earliest. In our opinion, ends of justice would be met it respondent No. 1 is directed to make fresh recruitment in accordance with the 1992 Rules within a maximum period of six months. Ordered accordingly.

> While disposing of the writ petitions in the manner indicated above, we make it clear that we have not expressed any opinion on the eligibility and entitlement of the Petitioners to be appointed as Chief Electrical Inspector by promotion and/or by direct recruitment and the competent authority shall make recruitment strictly in accordance with the 1992 Rules."

Accordingly, the meeting of Departmental Promotion Committee (for short, 'the DPC') was held on 23.8.2004. The case of the petitioner for promotion to the post of Chief Electrical Inspector was considered and rejected for the reason that he did not hold a degree in Electrical Engineering as contemplated by the 1992 Rules. However, the petitioner was given current duty charge of the post of Chief Electrical Inspector on 15.3.2005 (Annexures P-7 & P-7/A). The respondents have issued an advertisement on 29.1.2005 (P-8) for filling up of the post by direct recruitment on the ground that the aforementioned mode of appointment would be permissible as no one within the department was available for promotion. The petitioner has again approached this Court asserting that his case for promotion to the post of Chief Electrical Inspector could not be rejected by the DPC on 23.8.2004 as he is fully eligible and it has been prayed as a consequential relief that advertisement dated 29.1.205 (P-8) is liable to be quashed.

After hearing learned counsel for the parties we are of the considered view that the instant petition deserves to be allowed.

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For promotion to the post of Executive Engineer, there was no requirement of degree qualification provided by the 1939 Rules and admittedly the petitioner was promoted on 23.8.1991 as Executive Engineer under the 1939 Rules, which was much before the promulgation of the 1992 Rules. The petitioner was eligible and fulfilled all the requirements of the 1939 Rules for promotion as Executive Engineer and accordingly was promoted. There is no dispute in that respect and introducing the requirement of degree qualification in Electrical Engineering for promotion to the post of Executive Engineer in respect of the petitioner would result into retrospective operation of the 1992 Rules, which is neither contemplated by the Rules expressly or by necessary intendment nor it could be the case of the respondents. For all intents and purposes the petitioner is Executive Engineer within the meaning of Rule 8 read with Appendix 'B' of the 1992 Rules. Moreover, Rule 19 of the 1992 Rules provides for repeal and savings of 1939 Rules, which postulate that the 1939 Rules, in so far as those were applicable to the member of the Service, were to be repealed with the saving proviso that any order issued or any action taken under the 1939 Rules is deemed to have been issued or taken under the provisions of the 1992 Rules. Therefore, the promotion order of the petitioner, dated 23.8.1991, promoting him as Executive Engineer, has to be construed to be issued under the 1992 Rules.

The only question is as to whether the petitioner satisfy the requirement of Rule 8 read with Appendix 'B' of the 1992 Rules

for promotion to the post of Chief Electrical Engineer. Rule 8 with relevant extract of Appendix 'B' of the 1992 Rules, reads as under:-

> " 8. Method of appointment and qualifications. -- (1) The appointment to the Service shall be made in the manner as specified in Appendix 'B' to these rules:--
>
> Provided that if no suitable candidate is available for appointment to a post in the service by promotion or by direct appointment, as the case may be, such a post shall be filled in by transfer of a person holding identical or similar post in a State Government or Government of India.
>
> (2) No person shall be appointed to any post in the Service unless he possesses the qualifications and experience specified against that post in Appendix 'B' to these rules.
>
> (3) All promotions to a post in the Service shall be made by selection on the basis of merit-cum-seniority in accordance with the provisions of the Punjab Service (Appointment by Promotion) Rules, 1962, and no person shall be entitled to claim as a matter of right promotion to such post on the basis of seniority alone.
>
> (4) No person shall be recruited to any post in the Service by direct appointment unless he possesses knowledge of Punjabi language of Matriculation standard or its equivalent or passes test of Punjabi

language of Matriculation standard to be held by such authority as may be specified by the Government of Punjab in this behalf from time to time.

Provided that in the case of a person who does not possess the knowledge of Punjabi language of Matriculation standard or its equivalent at the time of appointment, his appointment to the Service may be made subject to the conditions that he shall acquire the aforesaid qualification within a period of six months from the date of appointment failing which his services shall be liable to be terminated without any notice."

"APPENDIX 'B'

(See Rule 8)

Serial No.	Designation of Post	Percentage for appointment by			Qualifications for appointment by	
		Promotion	Direct appointment	Transfer	Promotion	Direct appointment
1	2	3	4	5	6	7

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1	Chief Electrical Inspector	Hundred per cent	If no suitable candidate is available for appointment by promotion	..	From amongst the Executive Engineers who have an experience of working as such for a minimum period of ten years	(a) should possess a Degree in Electrical Engineering from a recognised University; and (b) Should have been regularly engaged for a minimum period of fifteen years in the practice of electrical engineering out of which not less than seven years must have been spent in an electrical or mechanical engineering workshop, or in general or transmission or distribution of electricity or in the administra-tion of the Indian Electricity Act, 1910 and the rules made thereunder in a position of

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2	Executive Engineer	Hundred per cent	If no suitable candidate is available for appointment by promotion	..	From amongst the Assistant Electrical Inspectors working under the control of the Chief Electrical Inspector who are degree-holder and having an experience of working as such for a minimum period of eight years	(a) Should possess a Degree in Electrical Engineering from a recognised university; and (b) Should have been regularly engaged for a minimum period of eight years in the practice of electrical engineering out of which not less than two years must have been spent in an electrical or mechanical engineering workshop or in generation or transmission or distribution of electricity or in the administra-tion of the Indian Electricity Act, 1910 and the rules made thereunder in a position of

A perusal of Rule 8 read with Appendix 'B' of the 1992 Rules shows that promotion to the post of Chief Electrical Inspector is to be made from amongst the Executive Engineer who have an experience of working as such for a minimum period of 10 years. It is obvious that no requirement of degree in Electrical Engineering has been laid down in Rule 8 read with Appendix 'B'. It is only in case of direct recruitment that the requirement of degree has been laid down. The mode of direct recruitment could be resorted to only if no suitable candidate is available for appointment by promotion. The stand of the respondents that even for promotion as Chief Electrical Inspector from the post of Executive Engineer a degree of Electrical Engineering is mandatory is unsustainable in the eyes of law as Rule 8 and Appendix 'B' of the 1992 Rules does not provide for a degree. Therefore, we find that the approach adopted by the DPC is in violation of the 1992 Rules, which completely prejudiced the right of the petitioner to be considered for promotion and, thus, violates Articles 14 and 16(1) of the Constitution. Accordingly, the writ petition merits acceptance.

In view of the above, the writ petition succeeds. The advertisement, dated 29.1.2005 (P-8) for filling up the post by direct recruitment, issued on the presumption that no candidate for promotion to the post of Chief Electrical Inspector is eligible, is hereby quashed. We further direct the respondents to consider the case of the petitioner afresh for promotion to the post of Chief

Electrical Inspector with effect from 28.3.2004 when the DPC had met first. In case, the petitioner is found suitable on merit then he would become entitled to all the benefits w.e.f. 28.3.2004 including the arrears of salary till the date of his superannuation on 31.10.2006. He shall also be entitled to all consequential benefits of re-fixation of pension and other retiral benefits. Let the needful be done within a period of three months from the date a certified copy of this order is received by the respondents.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

January 29, 2007

Pkapoor